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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,847	06/04/2002	Frank Stanglmeier	101191/1938	1438

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EXAMINER

TUNG, TA IISUNG

ART UNIT	PAPER NUMBER
1753	

DATE MAILED: 07/01/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

Paper No. 10

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 5-21-03
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 111; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 12-23 is/are pending in the application.
- ☐ Claim(s) is/are withdrawn from consideration.
- ☒ Claim(s) 12-23 is/are allowed.
- ☐ Claim(s) is/are rejected.
- ☐ Claim(s) is/are objected to.
- ☐ Claim(s) are subject to restriction or election requirement.

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit: 1102

Claims 12-23 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 12, line 12, "at least one of into and out..." is considered to be without supporting basis in the original disclosure. This expression appears to include the scenario wherein the oxygen is pumped into and out of the measuring gas compartment at the same time. Where is the basis for that. The original disclosure supports pumping oxygen either into or out of the compartment, but not simultaneously.

This rejection is prompted by applicant's May 21, 2003 response.

Claims 12-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12, lines 9, 11(both occ.) and 13, "electromechanical" is not understood. Does applicant mean--electrochemical--?

Claim 12, line 12, unless applicant intends to include the simultaneous pumping of oxygen into and out of the measuring gas compartment (which is considered to be without supporting basis as discussed before), the wording "at least one of into and out of" should simply be --into or out of--.

Art Unit: 1102

Claim 12, line 13, "wherein the circuit applies...." is process language and not proper for an apparatus claim. Wording such as --wherein the circuit is adapted to apply.....-- should be used instead.

This rejection is prompted by applicant's response.

Claims 12-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Kato et al 5,672,811.

Applicant argues that Kato does not disclose a circuit applying a voltage such that a partial pressure of oxygen in the measuring gas compartment corresponds to a lambda value equal to or greater than 1.3.

This argument is not persuasive. A voltage value or a lambda value is a process limitation and can not serve as a patentable distinction for an apparatus claim over prior art. The voltage source 20 in Kato is a variable power source (col. 12, line 28) that can be adjusted to whatever value is desired, including a value that would yield the lambda value recited in the instant claims. Thus, the Kato device is capable of carrying out the function of applicant's claimed apparatus. Whether the patented device is actually being operated in a manner to achieve that lambda value is irrelevant. If applicant has a patentable invention, it would be in a method for operating an apparatus, not the apparatus itself.

As for claim 20, Kato discloses an example of 0.8% gold at col. 27, line 63.

In the IDS of May 21, 2003, the DE document has been considered only to the extent of its drawings.

Art Unit: 1102

The substitute specification is approved.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The examiner can be reached at 703-308-3329. His supervisor Nam Nguyen can be reached at 703-308-3322. Any general inquiry should be directed to the receptionist at 703-308-0661. A fax number for TC 1700 is 703-872-9311.

T. Tung

Ta Tung

Primary Examiner

Art Unit 1753